

1 IN THE UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 EL PASO DIVISION

4

5 UNITED STATES OF AMERICA No. EP-10-CR-2842-FM

6 v. El Paso, Texas

7 JOSEPH O'HARA May 10, 2013

8

9

10 PLEA OF GUILTY

11 BEFORE THE HONORABLE FRANK MONTALVO

12 UNITED STATES DISTRICT JUDGE

13

14

15 APPEARANCES:

16 For the Government: J. Christopher Skillern  
17 Donna S. Miller  
18 Assistant United States Attorney  
19 700 East San Antonio, Suite 200  
20 El Paso, Texas 79901

21 For the Defendant: Albert G. Weisenberger  
22 Attorney at Law  
23 521 Texas Avenue  
24 El Paso, Texas 79901

25

26 Proceedings recorded by stenotype. Transcript produced by  
27 computer-aided transcription.

1 (Interpreter Carolina Duran present for Defendant  
2 Tavares-Mendez)

3 THE CLERK: EP-13-CR-696, USA versus Tomas  
4 Tavares-Mendez; and EP-10-CR-2842, USA versus Joseph O'Hara.

5 MR. ORTEGA: Good morning, Your Honor. Andres Ortega  
6 on behalf of the government, ready on the case against  
7 Mr. Tavares.

8 THE COURT: Thank you.

9 MR. SKILLERN: Good afternoon, Your Honor. Chris  
10 Skillern on behalf of the United States as to the Joseph O'Hara  
11 case.

12 THE COURT: Thank you.

13 MR. RODRIGUEZ: Good afternoon, Your Honor. Margarito  
14 Rodriguez on behalf of Mr. Tavares-Mendez. We are ready, sir.

15 THE COURT: Thank you.

16 MR. WEISENBERGER: Good afternoon, Your Honor. Al  
17 Weisenberger here appearing on behalf of Joseph O'Hara, ready  
18 to proceed on a plea agreement.

19 THE COURT: Thank you.

20 Adriana, place the defendants under oath, please.

21 THE CLERK: Please raise your right hand.

22 (Defendants sworn.)

23 THE COURT: Mr. Tavares, what is your full and correct  
24 name, sir?

25 DEFENDANT TAVARES: Tomas -- Tomas Ariel

14:04 1 Tavares-Mendez -- Daniel.

2 THE COURT: Could you please repeat your full name  
3 again?

4 DEFENDANT TAVARES: Tomas Daniel Tavares-Mendez.

5 THE COURT: Thank you.

6 Mr. O'Hara, what is your full and correct name, sir?

7 DEFENDANT O'HARA: I'm sorry, I couldn't hear you,  
8 Your Honor.

9 THE COURT: What is your full and correct name?

10 DEFENDANT O'HARA: Joseph, middle name James, O'Hara.

11 THE COURT: Thank you.

12 Mr. Rodriguez, have you had enough time to discuss the  
13 case with Mr. Tavares?

14 MR. RODRIGUEZ: Yes, Your Honor.

15 THE COURT: Mr. Weisenberger, have you had enough time  
16 to discuss the case with Mr. O'Hara?

17 MR. WEISENBERGER: Yes, Your Honor.

18 THE COURT: Based upon the discussions you have had  
19 with your respective clients, do you harbor any doubts about  
20 your client's mental capacity to plead guilty? Mr. Rodriguez?

21 MR. RODRIGUEZ: No, Your Honor.

22 THE COURT: Mr. Weisenberger?

23 MR. WEISENBERGER: No, Your Honor.

24 THE COURT: Do you believe your client to have both a  
25 factual as well as a rational understanding of the proceedings

14:05 1 pending and sufficient ability to discuss the case with you  
2 with a reasonable degree of rational understanding?

3 Mr. Rodriguez?

4 MR. RODRIGUEZ: Yes, Your Honor.

5 THE COURT: Mr. Weisenberger?

6 MR. WEISENBERGER: Yes, Your Honor.

7 THE COURT: Mr. Ortega, are there any suggestions  
8 otherwise in the government's file in Mr. Tavares' case?

9 MR. ORTEGA: No, Your Honor.

10 THE COURT: Mr. Skillern, are there any suggestions  
11 otherwise in the government's file in Mr. O'Hara's case?

12 MR. SKILLERN: No, Your Honor.

13 THE COURT: Thank you.

14 Are you suffering from any kind of illness or  
15 condition that as you stand here this afternoon is affecting  
16 you to such an extent that you cannot concentrate and pay  
17 attention to what we are doing here today? Mr. Tavares?

18 DEFENDANT TAVARES: No, sir.

19 THE COURT: How about you, Mr. O'Hara?

20 DEFENDANT O'HARA: No, sir.

21 THE COURT: Are you having any kind of mental or  
22 emotional difficulties, such as anxiety, depression, or  
23 anything like that that is affecting your ability to  
24 concentrate and understand what we are doing here today?

25 Mr. Tavares?

14:06 1 DEFENDANT TAVARES: No, sir.

2 THE COURT: Mr. O'Hara?

3 DEFENDANT O'HARA: No, sir.

4 THE COURT: I'm asking you those questions because  
5 over the next 20 to 30 minutes I will be saying a lot of things  
6 to you and I am going to be asking you a lot of questions. And  
7 I need to make sure you understand everything that I say to you  
8 and every question that I ask you.

9 If at any point in time you are confused, you don't  
10 understand something I say, let me know, and I will be happy to  
11 explain it or clarify it. Or if you want to talk to your  
12 lawyer before you answer one of my questions, let me know, and  
13 I will let you have whatever time you need to talk to your  
14 lawyer.

15 At all times, keep one thing in mind: You are under  
16 oath. So every time you speak to me, every time you answer one  
17 of my questions, you need to speak truthfully.

18 Do you understand that, Mr. Tavares?

19 DEFENDANT TAVARES: Yes, sir.

20 THE COURT: Mr. O'Hara?

21 DEFENDANT O'HARA: I do.

22 THE COURT: I am going to ask the government lawyer in  
23 your respective cases to go over the allegations the government  
24 is making against you and to go over the range of penalties you  
25 face by pleading guilty to those allegations. When the

14:07 1 government lawyers go over the penalties, they will refer to  
2 something called a term of supervised release. What that deals  
3 with is a period of time following a sentence of incarceration.  
4 And during that time, you have to comply with certain rules and  
5 conditions. Your failure to do that will in all likelihood put  
6 you back in prison.

7                   In your case, Mr. Tavares, you are going to be  
8 deported after you serve your time in custody. So if there is  
9 a term of supervised release imposed in your case, it will be a  
10 term of nonreporting supervised release.

11                   What that means to you is this: If you are caught  
12 trying to enter the United States illegally during your term of  
13 nonreporting supervised release or if you are found illegally  
14 inside the United States during that same time period, you are  
15 going to face a higher penalty than you would face if you were  
16 to do either one of those two things at any other point in  
17 time.

18                   So let me ask you, Mr. Tavares, do you understand what  
19 being subject to a term of nonreporting supervised release  
20 means?

21                   DEFENDANT TAVARES: Yes, sir.

22                   THE COURT: Mr. O'Hara, do you understand what being  
23 subject to a term of reporting supervised release means?

24                   DEFENDANT O'HARA: Yes, sir.

25                   THE COURT: Mr. Ortega, you may proceed.

14:08 1 MR. ORTEGA: Thank you, Your Honor.

2 Mr. Tavares, you have been charged by the grand jury  
3 in the Western District of Texas in a one-count indictment.  
4 You have agreed to plead guilty to that indictment.

5 The indictment charges you as follows: That on or  
6 about March 14, 2013, in the Western District of Texas, you,  
7 Tomas Tavares-Mendez, an alien who had been previously  
8 excluded, deported, or removed from the United States on or  
9 about August 7, 2012, attempted to enter, entered or was found  
10 -- and was found in the United States without having previously  
11 received express consent to re-apply for admission from the  
12 United States Attorney General and the Secretary of Homeland  
13 Security, the successor pursuant to Title 6, United States  
14 Code, Section 202(3), 202(4), and 557, in violation of Title 8,  
15 United States Code, Section 1326.

16 Mr. Tavares, do you understand what you are being  
17 charged with?

18 DEFENDANT TAVARES: Yes.

19 MR. ORTEGA: Do you also understand what you are  
20 pleading guilty to?

21 DEFENDANT TAVARES: Yes.

22 MR. ORTEGA: The maximum punishment for this offense  
23 is a term of imprisonment of not more than two years, a fine of  
24 up to \$250,000, and a \$100 special assessment.

25 However, pursuant to Title 8, United States Code,

14:10 1 Section 1326(b)(2), the government has filed a notice of intent  
2 to seek increased statutory penalty, which means the maximum  
3 punishment that you could receive is a term of imprisonment of  
4 not more than 20 years. There is no mandatory minimum sentence  
5 in this case. Punishment for this offense also carries a term  
6 of supervised release of not more than three years.

7                   Mr. Tavares, do you understand the maximum penalty --  
8 the maximum punishment in your case?

9                   DEFENDANT TAVARES: Yes.

10                  THE COURT: Mr. Skillern.

11                  MR. SKILLERN: Thank you, Your Honor.

12                  Mr. O'Hara, you have been charged by the grand jury in  
13 the Western District of Texas in a three-count indictment.  
14 However, you have agreed to plead guilty to count one of the  
15 indictment pursuant to a plea agreement.

16                  Count one of the indictment against you charges that  
17 beginning on or about February 1, 2003, and continuing through  
18 and including on or about October 29, 2007, in the Western  
19 District of Texas and elsewhere, Defendants Tomas Gabaldon and  
20 Joseph O'Hara conspired and agreed together with GL, SMM and  
21 others known, but not charged herein, and others unknown, to  
22 commit offenses against the United States, that is, to  
23 knowingly devise a scheme and artifice to defraud the El Paso  
24 Independent School District and citizens of El Paso, Texas  
25 living and voting in the EPISD of the right to honest services

1 of Defendant Tomas Gabaldon, a public servant, and SMM, an  
2 elected EPISD trustee, in the affairs of EPISD; and conspired  
3 to knowingly devise a scheme to obtain money and property by  
4 means of material false and fraudulent pretenses,  
5 representations and promises. That is, the defendant, Joseph  
6 O'Hara, and GL agreed to pay cash money, campaign  
7 contributions, and other bribes and kickbacks to Defendant  
8 Tomas Gabaldon, an EPISD administrator, and SMM, a trustee of  
9 EPISD, and said defendant, Tomas Gabaldon, a public servant,  
10 and SMM agreed to receive cash money, campaign contributions,  
11 and other bribes and kickbacks in exchange for Defendant Tomas  
12 Gabaldon's and SMM's support and vote in their official  
13 capacity with EPISD, in violation of their fiduciary duties as  
14 an EPISD administrator and elected trustee, for agreements and  
15 contracts between EPISD and Vendor 1, a vendor seeking business  
16 with the EPISD. And in furtherance of the scheme to deprive  
17 the EPISD and the citizens of El Paso, Texas living and voting  
18 in the EPISD of the honest services of the defendant, Tomas  
19 Gabaldon, and SMM, and to obtain money and property by material  
20 false and fraudulent pretenses, representations, and promises,  
21 the defendants and their co-conspirators sent and caused to be  
22 sent and delivered, by United States Postal Service, checks,  
23 proposals and other correspondence, all in violation of Title  
24 18, United States Code, Sections 1349, 1346, and 1341.

Mr. O'Hara, the maximum punishment that you could

14:13 1 receive on count one of the indictment is a term of  
2 imprisonment of up to 20 years, a fine of up to \$250,000, and a  
3 \$100 special assessment. Punishment for this offense also  
4 requires a term of supervised release of not more than three  
5 years. Do you understand the maximum punishment in this case?

6 DEFENDANT O'HARA: Yes, I do.

7 THE COURT: Do you understand the allegations the  
8 government is making against you, Mr. O'Hara?

9 DEFENDANT O'HARA: Are you addressing me, Your Honor?

10 THE COURT: Yes. Do you understand the allegations  
11 the government is making against you?

12 DEFENDANT O'HARA: Yes.

13 THE COURT: In other words, do you understand the  
14 allegations that you are pleading guilty to today?

15 DEFENDANT O'HARA: Yes.

16 THE COURT: Okay. Mr. Tavares, are you here today to  
17 plead guilty voluntarily?

18 DEFENDANT TAVARES: Yes, sir.

19 THE COURT: How about you, Mr. O'Hara?

20 DEFENDANT O'HARA: Yes, sir.

21 THE COURT: Did anyone force you, threaten you, or  
22 coerce you in any way into pleading guilty today? Mr. Tavares?

23 DEFENDANT TAVARES: No, sir.

24 THE COURT: Mr. O'Hara?

25 DEFENDANT O'HARA: No, sir.

14:14 1                   THE COURT: Did anyone make any promises or offer you  
2 any secret deals to induce you to plead guilty in your case?  
3 Mr. Tavares?

4                   DEFENDANT TAVARES: No, sir.

5                   THE COURT: Mr. O'Hara?

6                   DEFENDANT O'HARA: No, sir.

7                   THE COURT: Have you had enough time to talk to your  
8 lawyer about your case? Mr. Tavares?

9                   DEFENDANT TAVARES: Yes, sir.

10                  THE COURT: How about you, Mr. O'Hara?

11                  DEFENDANT O'HARA: Yes, sir.

12                  THE COURT: Mr. O'Hara, have you also had enough time  
13 to talk to your lawyer about the plea agreement in your case?

14                  DEFENDANT O'HARA: Yes, sir.

15                  THE COURT: Did you make sure you understood the terms  
16 and conditions of the plea agreement before you signed it?

17                  DEFENDANT O'HARA: Yes, sir.

18                  THE COURT: Was anything offered to you to induce you  
19 to plead guilty in your case that wasn't part of the plea  
20 agreement document that you signed in your case?

21                  DEFENDANT O'HARA: No, sir.

22                  THE COURT: Mr. Tavares, did anyone make any promises  
23 or offer you any secret deals to induce you to plead guilty in  
24 your case?

25                  DEFENDANT TAVARES: No, sir.

14:15 1                   THE COURT: Are you satisfied with the work that your  
2 lawyer has done for you in your case? Mr. Tavares?

3                   DEFENDANT TAVARES: Yes, sir.

4                   THE COURT: How about you, Mr. O'Hara?

5                   DEFENDANT O'HARA: Yes, sir.

6                   THE COURT: Do you understand that you are entitled to  
7 have a lawyer represent you at every step of the proceedings in  
8 your case, and if for some reason your lawyer cannot continue  
9 to represent you, I will appoint another lawyer to continue  
10 representing you at no cost to you?

11                  Do you understand that, Mr. Tavares?

12                  DEFENDANT TAVARES: Yes, sir.

13                  THE COURT: Do you understand, Mr. O'Hara?

14                  DEFENDANT O'HARA: Yes, sir.

15                  THE COURT: Do you understand that under the law you  
16 are presumed to be innocent and it is the government's  
17 responsibility to prove the allegations the government is  
18 making against you and the government must do that by  
19 presenting proof beyond a reasonable doubt of the allegations  
20 the government is making in your case?

21                  Do you understand that, Mr. Tavares?

22                  DEFENDANT TAVARES: Yes, sir.

23                  THE COURT: Do you understand that, Mr. O'Hara?

24                  DEFENDANT O'HARA: Yes, sir.

25                  THE COURT: Do you understand that by pleading guilty

14:16 1 today, you are giving up the right you have to have a trial in  
2 front of a jury? By giving up that right, you are giving up  
3 the right you have to have your lawyer question the witnesses  
4 the government has against you. You are giving up the right  
5 you have to have your lawyer challenge the evidence the  
6 government has against you. You are also giving up the right  
7 you have to bring witnesses to court to testify on your behalf.  
8 And you are giving up the right you have to present any defense  
9 that you may have against the allegations the government is  
10 making against you. You are giving up all of those rights  
11 because you are pleading guilty today.

12 Is that clear to you, Mr. Tavares?

13 DEFENDANT TAVARES: Yes, sir.

14 THE COURT: Is that clear to you, Mr. O'Hara?

15 DEFENDANT O'HARA: Yes, sir.

16 THE COURT: Do you also understand that, by pleading  
17 guilty today, you are giving up the right you have to remain  
18 silent? And the reason why you are giving up that right you  
19 have to remain silent is because you have to admit to the  
20 allegations the government is making against you and you have  
21 to admit to the facts that support those allegations.

22 Do you understand that, Mr. Tavares?

23 DEFENDANT TAVARES: Yes, sir.

24 THE COURT: Do you understand that, Mr. O'Hara?

25 DEFENDANT O'HARA: Yes, sir.

14:17 1                   THE COURT: Mr. O'Hara, you also need to understand  
2 that, because you are pleading guilty pursuant to a plea  
3 agreement with the government, you are giving up the right you  
4 have to appeal your case. Save and except for two situations,  
5 you cannot appeal your case. You can appeal your case if it  
6 comes up that the government engaged in illegal conduct in  
7 bringing the case against you. And you can also appeal your  
8 case if you receive ineffective assistance from your lawyer.  
9 Other than those two situations, you cannot appeal your case by  
10 virtue of the fact that you are pleading guilty pursuant to a  
11 plea agreement. Is that clear to you, sir?

12                   DEFENDANT O'HARA: Yes, sir.

13                   THE COURT: Both of you need to understand that the  
14 decision about your sentence is going to be made by me. The  
15 starting point for the decision-making process is the  
16 following: There is going to be a presentence report prepared  
17 in each of your cases. That presentence report is going to  
18 describe for me your offense conduct. It is going to tell me  
19 about any other criminal record you may have. It will describe  
20 for me the applicable sentencing guidelines. It will tell me  
21 about your family background, your health, education,  
22 employment experience, and any financial resources that you may  
23 have.

24                   In addition to that document -- before I forget, you  
25 will have a chance to go over that document with your lawyer.

14:19 1 And if there is anything about that document that is incorrect  
2 or incomplete, your lawyer will be able to take it up with me  
3 before you are sentenced.

4                   In addition to that document, in your case,  
5 Mr. O'Hara, I will look to the terms and conditions of your  
6 plea agreement to the extent that they impact your sentence.  
7 And I will tell you right now that unless you breach the terms  
8 and conditions of your plea agreement, I will honor the plea  
9 agreement sentencing commitment there.

10                  I will hear from the lawyers, and I will make a  
11 decision about the supervised release at the time of your  
12 sentencing. And I will determine at the time of your  
13 sentencing the amount of restitution because those two were  
14 left to be decided by me. But insofar as the actual time in  
15 custody, I will intend to abide by the terms of the plea  
16 agreement unless you breach the plea agreement.

17                  Do you understand that, Mr. O'Hara?

18                  DEFENDANT O'HARA: Yes, sir.

19                  THE COURT: Okay. So back to you, Mr. Tavares. In  
20 addition to the presentence report, I will consider any  
21 information about you that either the government lawyer or your  
22 lawyer brings to my attention.

23                  Do you understand that, Mr. Tavares?

24                  DEFENDANT TAVARES: Yes, sir.

25                  THE COURT: In both of your cases, I will consider

14:21 1 what the lawyers have to say during your sentence. I will  
2 consider what you personally have to say on your own behalf.  
3 All of that before I make a decision about your final sentence.  
4 I'm explaining it to you so you have one thing very clear in  
5 your mind: You do not have a right to withdraw your plea of  
6 guilty because you are unhappy with the sentence you receive in  
7 your case.

8 Do you understand that, Mr. Tavares?

9 DEFENDANT TAVARES: Yes.

10 THE COURT: Do you understand that, Mr. O'Hara?

11 DEFENDANT O'HARA: Yes, sir.

12 THE COURT: I have gone over the rights that you have  
13 that you are giving up by pleading guilty, I know you are here  
14 voluntarily to plead guilty today, and I know you understand  
15 the allegations the government is making against you, and of  
16 course, the penalties you face by pleading guilty to those  
17 allegations.

18 So with that in mind, this is what I need to know: Do  
19 you still want to plead guilty in your case, yes or no?

20 Mr. Tavares?

21 DEFENDANT TAVARES: Yes, sir.

22 THE COURT: Mr. O'Hara?

23 DEFENDANT O'HARA: Yes, sir.

24 THE COURT: Mr. Ortega, let me hear the factual basis  
25 of the allegations against Mr. Tavares.

14:22 1                   MR. ORTEGA: Yes, sir. The facts would show that on  
2 March 14, 2013, the defendant, Tomas Tavares-Mendez, was found  
3 by United States Border Patrol Agent Raymond Bencomo in the  
4 Western District of Texas approximately .1 mile north of the  
5 Paso Del Norte Port of Entry in El Paso, Texas.

6                   It was determined through official records of the  
7 Department of Homeland Security and an interview with the  
8 defendant that he was an alien to the United States and a  
9 citizen and native of Mexico. Immigration records reflect that  
10 defendant was removed through Brownsville, Texas, on August 7,  
11 2012. Those same records reflect the defendant had not  
12 received the consent of the Attorney General or the Secretary  
13 of Homeland Security to re-apply for admission into the  
14 United States.

15                   THE COURT: Mr. Tavares, are those facts true?

16                   DEFENDANT TAVARES: Yes, sir.

17                   THE COURT: Mr. Tavares, to the indictment in your  
18 case, how do you plead, guilty or not guilty?

19                   DEFENDANT TAVARES: Guilty.

20                   THE COURT: Mr. Skillern, let me hear the factual  
21 basis of the allegations --

22                   MR. SKILLERN: Thank you, Your Honor. I will read a  
23 summarized version of the factual basis --

24                   THE COURT: That will be fine.

25                   MR. SKILLERN: -- that is attached to the plea

14:23 1 agreement.

2                   In 1994, Gary William Lange created Mecca Tech,  
3 Incorporated, MTI, a billing company for school districts.  
4 Lange hired Tomas Gabaldon to serve as MTI's New Mexico state  
5 director. Thereafter, Gabaldon became a contract employee for  
6 MTI. In 2002, Lange and Co-defendant Joseph O'Hara agreed to  
7 partner their respective companies, or discussed doing so, MTI  
8 and Strategic Government Systems, Incorporated (SGS), which was  
9 owned by O'Hara, and it was in the business of governmental  
10 contracts and services.

11                   Beginning in November 2002, Gabaldon provided  
12 consulting services to the El Paso Independent School District  
13 on a contract basis. On or about April 23 in 2003, Gabaldon  
14 became employed by EPISD as an associate superintendent for  
15 special education. Gabaldon continued to receive monthly  
16 payroll checks from MTI. Beginning in early 2003, the EPISD  
17 issued a request for a proposal, an RFP, regarding Medicaid  
18 Administrative Claims coupled with School Health and Related  
19 Services billing. The RFP also requested that the vendor have  
20 an operating software designed for special education students'  
21 Individual Education Plans.

22                   Gabaldon advised Lange to submit a proposal to the  
23 RFP. Lange approached O'Hara requesting that SGS provide the  
24 IEP software and suggesting that MTI would perform the billing.  
25 O'Hara agreed to bid on the RFP together with Lange under the

14:24 1 name of SGS. Gabaldon and Lange agreed that if SGS/MTI was  
2 awarded the contract with the EPISD, Lange would pay Gabaldon  
3 \$50,000.

4 In April of 2003, EPISD received various proposals in  
5 response to the RFP. To evaluate the proposals, Gabaldon  
6 assembled a bid review committee. The committee ranked one of  
7 the bidders, 4GL, as its first choice to receive the contract,  
8 and SGS as its second choice. On or about July 8 of 2003,  
9 Gabaldon executed an Executive Summary of Board Agenda Item,  
10 which was subsequently presented to the EPISD board of  
11 directors whose approval was required for the award of the  
12 contract. In the summary, Gabaldon represented that SGS was  
13 the choice of the review committee and Gabaldon recommended the  
14 award of the contract to SGS. At the July 15, 2003 EPISD board  
15 meeting, the contract was awarded to SGS.

16 Following award of -- the award of contract, Gabaldon  
17 approached Lange regarding the monies Gabaldon claimed that he  
18 was owed. Gabaldon was adamant that the payment to him not be  
19 directly tied to SGS, as such Gabaldon was paid through a  
20 company called IC Solutions, LLC, that Lange had previously  
21 created with another MTI employee. Lange used ICS to funnel  
22 bribe money to Gabaldon, and Gabaldon accepted the money  
23 through his company SYG.

24 On or about -- on August 10, 2003, EPISD mailed a  
25 check to SGS for \$750,000 for the IEP software through the

14:26 1 United States Postal Service. On September 1, 2003, at  
2 O'Hara's direction, SGS wrote a check in the amount of \$62,500  
3 to ICS. On September 11, 2003, the check was paid. On  
4 September -- on or about September 10, 2003, ICS wrote a check  
5 for \$25,000 to SYG, which ICS mailed through the United States  
6 Postal Service. Gabaldon endorsed the check and deposited it  
7 on September 24, 2003. On November 6, 2003, at O'Hara's  
8 direction, SGS wrote another check for \$62,500 to ICS, which  
9 was paid on November 10, 2003. ICS received the check and  
10 wrote a check for \$25,000 to SYG, Gabaldon's company, which was  
11 mailed through the United States Postal Service. Gabaldon  
12 deposited the check on November 20, 2003.

13 On January 8 -- 28 of 2004, EPISD mailed a second  
14 check for \$750,000 for the software through the United States  
15 Postal Service. On February 5, 2004, at O'Hara's direction,  
16 SGS wrote another check for \$62,500 to ICS, \$25,000 of which  
17 was mailed from ICS to SYG through the United States Postal  
18 Service.

19 With regard to the SHARS/MAC billing portion of the  
20 contract, during the first several months of the contract, SGS  
21 fell short of the fees they anticipated collecting. In April  
22 of 2004, O'Hara and Lange proposed to Gabaldon a change to  
23 SGS's contract with EPISD, later known as Amendment One. The  
24 contract change would eventually increase the fees EPISD paid  
25 to SGS. Lange and O'Hara discussed the potential contract

14:28 1 change, and Lange advised O'Hara he would need money from  
2 O'Hara to pay people in El Paso, Texas, to get the contract  
3 change approved.

4 On or about May -- May 6 of 2004, Corporate  
5 Consultants, a company owned by Lange, received in its account  
6 at Capitol National Bank a wire transfer of \$35,000 from the  
7 O'Hara Group, which was sent at O'Hara's direction.

8 On or about May 31 of 2004, Lange's corporation,  
9 Corporate Consultants, sent a check to SYG and Gabaldon for  
10 \$12,500. On or about June 25, 2004, Corporate Consultants sent  
11 another check to Gabaldon also for \$12,500.

12 On September 14 of 2004, Gabaldon and EPISD special  
13 educational legal counsel presented Amendment One to the SGS  
14 contract to the school board and recommended its approval. The  
15 board approved Amendment One, and it was executed on October 1,  
16 2004.

17 In January of 2005, Lange was approached by an EPISD  
18 official that suggested that Lange make a payment to EPISD  
19 board trustee member Salvador Mena, Jr. On or about -- in  
20 January of 2005, Mena, Lange, and others met at a restaurant in  
21 El Paso, Texas. Lange was informed that the maximum amount for  
22 a campaign contribution to Mena was \$5,000. It was understood  
23 by Mena that the \$5,000 campaign contribution were for his  
24 favorable vote for Amendment One and future support of SGS.  
25 Thereafter, Lange conferred with O'Hara concerning the proposed

14:29 1 \$5,000 contribution to Mena. On February 14, 2005, at O'Hara's  
2 direction, a check for \$5,000 was written to Mena -- to Mena's  
3 re-election committee from FREEPAC, a political action  
4 committee set up by O'Hara in New York State and for which  
5 O'Hara was the treasurer. The check was sent to Lange by  
6 O'Hara through interstate commerce via Federal Express, a  
7 commercial interstate carrier. Lange delivered the check  
8 personally to Mena in El Paso, Texas. Thereafter, Mena  
9 assisted in getting payments sent to SGS from EPISD that had  
10 been withheld by EPISD due to problems with SGS's performance  
11 under Amendment One to the contract.

12 Amendment One resulted in EPISD paying 2 million --  
13 just over \$2 million in fees during the life of the contract  
14 with SGS for SHARS/MAC reimbursement services. Without the  
15 execution and adoption of the Amendment One, EPISD would have  
16 paid approximately \$670,000 for the same services under the  
17 initial contract. Given Amendment One, EPISD paid 1 million --  
18 just over \$1,300,000 that it would not have paid under the  
19 original contract. With regard to the software component of  
20 the contract, the software constructed by SGS never became  
21 fully functional and never performed as promised by SGS. EPISD  
22 paid \$2,300,000 for the software.

23 The district calculates its total loss on the contract  
24 is just over \$2,800,000.

25 THE COURT: Mr. O'Hara, the facts the government

14:31 1 lawyer read that are attributed to your direct conduct, are  
2 they true or not true?

3 DEFENDANT O'HARA: It's correct, Your Honor.

4 THE COURT: Are those facts true or not true?

5 DEFENDANT O'HARA: True.

6 THE COURT: Did you also review the totality of the  
7 factual basis that is attached to your plea agreement with your  
8 lawyer?

9 DEFENDANT O'HARA: I did, Your Honor.

10 THE COURT: And are those facts true or not true?

11 DEFENDANT O'HARA: They are true, Your Honor.

12 THE COURT: To count one of the indictment in your  
13 case, how do you plead, guilty or not guilty?

14 DEFENDANT O'HARA: Guilty.

15 THE COURT: I find that both of you are pleading  
16 guilty freely and voluntarily. I find that you understand the  
17 allegations the government is making against you and the  
18 penalties you face by pleading guilty to those allegations.

19 I find that you understand your rights, that you  
20 knowingly waive your rights, that you are competent to enter  
21 your plea of guilty, and that there is a factual basis for your  
22 plea of guilty, and I'm accepting both of your pleas of guilty  
23 at this time.

24 Who are the probation officers assigned to prepare the  
25 presentence reports in these two cases?

14:32 1 PROBATION OFFICER: Good afternoon, Your Honor, Myrna  
2 Lozano with U.S. Probation. For Defendant O'Hara, Martin  
3 Chavez is assigned to the case; and for Tavares-Mendez, Myrna  
4 Lozano.

5 THE COURT: Very well. Adriana, let's go ahead and  
6 set these cases for sentencing, please.

7 THE CLERK: For Mr. Tavares, sentencing July 19 at  
8 9:00; for Mr. O'Hara, July 30 at 9:00.

9 THE COURT: Very well. Mr. Weisenberger, I am going  
10 to let Mr. O'Hara stay free pending his sentencing, and I will  
11 also allow him to self-surrender on or about December 1 --

12 MR. WEISENBERGER: Thank you, Your Honor.

13 THE COURT: -- again provided that he complies with  
14 the terms of the plea agreement.

15 And to facilitate things for him, work with Ms. Lozano  
16 and Mr. Chavez in setting the presentence report interview via  
17 teleconferencing.

18 MR. WEISENBERGER: They have agreed to do it  
19 immediately after this proceeding, Your Honor.

20 THE COURT: Okay. So he is going to be available to  
21 do it today? The component that is going to be missing is the  
22 financial data information. So you need to make sure that any  
23 and all things financial -- the probation officer is entitled  
24 to know every single dollar he has to his name and every item  
25 of property -- real estate or personal property that he owns.

14:34 1 Okay. So all of that needs to be disclosed.

2 Do you understand me, Mr. O'Hara?

3 DEFENDANT O'HARA: Yes, sir.

4 THE COURT: Fair enough. Anything else, folks?

5 MR. ORTEGA: No, Your Honor.

6 MR. SKILLERN: No, Your Honor.

7 MR. WEISENBERGER: Thank you, Your Honor.

8 MR. RODRIGUEZ: No, Your Honor.

9 THE COURT: Very well. We are adjourned. Thank y'all  
10 very much.

11 \* \* \* \* \*

12 C E R T I F I C A T E

13 I certify that the foregoing is a correct transcript from  
14 the record of proceedings in the above-entitled matter. I  
15 further certify that the transcript fees and format comply with  
16 those prescribed by the Court and the Judicial Conference of  
17 the United States.

18 Signature: /s/Nalene Benavides Date: May 29, 2013  
19 Nalene Benavides, RMR, CRR

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